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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,475	10/01/2003	Donald E. Weder	8403.970	7525

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EXAMINER

PALO, FRANCIS T

ART UNIT PAPER NUMBER

3644

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/676,475

Applicant(s)

WEBER ET AL.

Examiner

Francis T. Palo

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims.

Therefore, **“the at least one drainage hole”** cited in claim-10, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Charbonneau (US Des. 259,333) in view of **Landau** (US 5,235,782) 1993

and **Evans** (US 3,512,700) 1968.

Regarding **claim-1**:

Charbonneau teaches a package for a potted plant having a flattened condition, a tapered sidewall portion and a generally frustoconical shape, as cited.

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Charbonneau is silent as to a gusseted convexly curved lower end as cited.

Landau like Charbonneau, teaches a cover for a potted plant having a flattened condition, a tapered sidewall portion and a generally frustoconical shape, as cited, and further teaches a gusseted lower end; specifically, Landau teaches "this folded additional material within the base portion of the bag can be provided in a variety of shapes" (column-2, beginning at line-9 thereabout).

Landau is therefore relied upon for the teaching of a gusseted lower end in a variety of shapes, in a plant sleeve.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Charbonneau with a gusseted lower end as taught by Landau, for the well-known advantages of that feature.

Charbonneau as modified, renders obvious a gusseted lower end in a plant sleeve, but lacks a convexly curved gusseted lower end as cited (Landau could be relied upon here as well for a gusseted convexly curved lower end teaching).

Evans teaches a flat flexible bag in which a rounded object can be packaged without puckering (*Summary of the Invention*) having a convexly curved lower end as cited (see Figure-5 of Evans and Figure-2 of the instant invention).

It would have been obvious to one of ordinary skill in the art at the time the invention was made,

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to have further modified the sleeve of Charbonneau with a gusseted lower end as cited, and as taught by Evans, for the well-known advantage of packaging a rounded item as taught by Evans.

Regarding **claim-2**:

The discussion above regarding claim-1 is relied upon.

Charbonneau as modified is capable of "**substantially conforming**" as cited in the instant claim.

Regarding **claim-3**:

The discussion above regarding claim-1 is relied upon.

Charbonneau discloses "an ornamental design" as cited (decorative cover).

Regarding **claim-4**:

The discussion above regarding claim-1 is relied upon.

Given a reasonable interpretation consistent with the broad recitation of claim-4, the sleeve of Charbonneau is capable of "**connected to the pot**" as cited, as it is well known that plant sleeves tightly fit (are connected) about plant pots.

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Regarding **claim-5**:

The discussion above regarding claim-1 is relied upon.

The sleeve of Charbonneau is capable of the construction materials cited.

Regarding **claim-6**:

The discussion above regarding claim-1 is relied upon.

Charbonneau depicts two detachable upper portions.

Regarding **claim-7**:

The discussion above regarding claim-1 is relied upon.

The sleeve of Charbonneau is capable of the thickness range cited.

Regarding **claim-8**:

The discussion above regarding claim-1 is relied upon.

Charbonneau claims an ornamental design and teaches contrasting color.

Regarding **claim-9**:

The discussion above regarding claim-1 is relied upon.

Charbonneau is silent as to a curved upper end.

Landau teaches a curved upper end as a decorative feature.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Charbonneau with a curved upper end as cited, and as taught by Landau, for decorative considerations.

Claim-10 is rejected under 35 U.S.C: 103(a) as being unpatentable over **Charbonneau** in view of **Landau** and **Evans** as applied to claim-1 above, and further in view of **Weder** (US 5,363,592).

Regarding **claim-10**:

Charbonneau as modified, lacks at least one hole for drainage as cited.

Weder teaches a sleeve with a drainage hole in the bottom (see Figures).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Charbonneau to include a drainage hole as cited, and as taught by Weder, for the well-known advantages of that feature.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Ericson '322, Doyen '993, Bustin '497 and Erickson '849 teach flat plastic containers having convexly curved lower ends.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No.

6,655,086 in view of U.S. Patent No. **5,363,592**.

Whereas Weder '086 is silent in the conflicting claims as to a drainage hole (instant claim-10), Weder '592 teaches a drainage hole in a sleeve, for the well-known advantages of that feature.

It would have therefore been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Weder '086 as taught by Weder '592, for the well-known advantages of that feature.

Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,5,7,8 and 9 of U.S. Patent No. **6,523,305** in view of U.S. Patent Numbers **6,477,804**, **6,341,446**, **6,655,086** and **5,363,592**.

Whereas Weder '305 is silent in the conflicting claims as to a detachable upper portion (instant claim-6), Weder '804 teaches a detachable upper portion; It would have therefore been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Weder '305 as taught by Weder '804, for the well-known advantages of that feature.

Whereas Weder '305 is silent in the conflicting claims as to a sleeve thickness (instant claim-7), Weder '446 teaches the thickness as cited in the instant claim; It would have therefore been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Weder '305 as taught by Weder '446, for the well-known advantages of that feature.

Whereas Weder '305 is silent in the conflicting claims as to a decorative pattern (instant claim-8), Weder '086 teaches a decorative pattern as cited in the instant claim; It would have therefore been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Weder '305 as taught by Weder '086, for the well-known advantages of that feature.

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Whereas Weder '305 is silent in the conflicting claims as to a curved upper end (instant claim-9), Weder '086 teaches a curved upper end as cited in the instant claim; It would have therefore been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Weder '305 as taught by Weder '086, for the well-known advantages of that feature.

Whereas Weder '305 is silent in the conflicting claims as to a drainage hole (instant claim-10), Weder '592 teaches a drainage hole in a sleeve, for the well-known advantages of that feature.

It would have therefore been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Weder '305 as taught by Weder '592, for the well-known advantages of that feature.

Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,3,5,6,9,10,13 and 24 of U.S. Patent No. **6,341,446** in view of U.S. Patent Numbers **6,477,804**, **6,655,086** and **5,363,592**.

Whereas Weder '446 is silent in the conflicting claims as to a decorative pattern (instant claim-8), Weder '086 teaches a decorative pattern as cited in the instant claim; It would have therefore been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Weder '446 as taught by Weder '086, for the well-known advantages of that feature.

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Whereas Weder '446 is silent in the conflicting claims as to a curved upper end (instant claim-9), Weder '084 teaches a curved upper end as cited in the instant claim; It would have therefore been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Weder '446 as taught by Weder '084, for the well-known advantages of that feature.

Whereas Weder '446 is silent in the conflicting claims as to a drainage hole (instant claim-10), Weder '592 teaches a drainage hole in a sleeve, for the well-known advantages of that feature.

It would have therefore been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Weder '446 as taught by Weder '592, for the well-known advantages of that feature.

Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,3,5,6,9,10,13 and 24 of U.S. Patent No. **6,182,395** in view of U.S. Patent Numbers **6,477,804**, **6,655,086** and **5,363,592**.

Whereas Weder '395 is silent in the conflicting claims as to a decorative pattern (instant claim-8), Weder '086 teaches a decorative pattern as cited in the instant claim; It would have therefore been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Weder '395 as taught by Weder '086, for the well-known advantages of that feature.

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Whereas Weder '395 is silent in the conflicting claims as to a curved upper end (instant claim-9), Weder '084 teaches a curved upper end as cited in the instant claim; It would have therefore been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Weder '395 as taught by Weder '084, for the well-known advantages of that feature.

Whereas Weder '395 is silent in the conflicting claims as to a drainage hole (instant claim-10), Weder '592 teaches a drainage hole in a sleeve, for the well-known advantages of that feature.

It would have therefore been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Weder '395 as taught by Weder '592, for the well-known advantages of that feature.

Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,5 and 6 of U.S. Patent No. **6,662,495** in view of U.S. Patent Numbers **6,655,086**, and **5,363,592**.

Whereas Weder '495 is silent in the conflicting claims as to the limitations of instant claims 2-4, 6-8 and 10, Weder '086 and Weder '592 teach those limitations; It would have therefore been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Weder '495 as taught by Weder '086 and Weder '592, for the well-known advantages of those features.

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Claims 1-10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,2,7,10,11 and 14 of U.S. Patent No. **6,185,904** in view of U.S. Patent Numbers **6,655,086**, **6,477,804** and **5,363,592**.

Whereas Weder '904 is silent in the conflicting claims as to the limitations of instant claims 6,9 and 10, Weder '086, Weder '804 and Weder '592 teach those limitations;

It would have therefore been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the sleeve of Weder '904 as taught by Weder '086, Weder '804 and Weder '592, for the well-known advantages of those features.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595 (**571-272-6907 after 4/4/05**).

The examiner can normally be reached on M-Tu., Th.-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703-305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Francis T. Palo

Francis T. Palo
Examiner
Art Unit 3644